

**Supporting Statement A
for Paperwork Reduction Act Submissions**

**OMB Control Number 1076-0167
Tribal Energy Resource Agreements
25 CFR 224**

Terms of Clearance: None

1. Explain the circumstances that make the collection of information necessary.

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109-58) amended Title XXVI (Indian Energy) of the Energy Policy Act of 1992 by adding new provisions concerning development of energy resources on tribal lands. As amended, Title XXVI, Section 2604, authorizes the Secretary to approve individual Tribal Energy Resource Agreements (TERAs).

The intent of these agreements is to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian self-determination. A TERA offers a tribe an entirely new alternative for developing energy-related business agreements and awarding leases and granting rights-of-way for energy facilities without having to obtain further approval from the Secretary of the Interior (Secretary).

The regulations implementing Title XXVI are at 25 CFR 224. The following table details the IC requirements in subparts B, C, D, E, F, G, and H of these regulations:

Table 1 – Information Collections Associated with Tribal Energy Resource Agreements Under The Indian Tribal Energy Development And Self Determination Act		
Citation 25 CFR 224	Section Title	Information Collection Requirement
Subpart B — Procedures for Obtaining Tribal Energy Resource Agreements		
224.53 and 224.63	What must an Application for an Agreement contain and What provisions must an Agreement contain?	224.53 Provisions (a) through (p) outline Application information requirements and 225.63 Provisions (a) through (c) outline Agreement requirements
224.57(d)	What must the Director do upon receipt of an Application?	Director issues written notice to Tribe listing additional information requirements
224.61	What will the Tribe provide to the Director after receipt of the Director's report on the Application consultation meeting?	Tribe must submit final proposed Agreement

Table 1 – Information Collections Associated with Tribal Energy Resource Agreements Under The Indian Tribal Energy Development And Self Determination Act		
Citation 25 CFR 224	Section Title	Information Collection Requirement
224.64	How may a Tribe assume management of development of different types of energy resources?	A Tribe may assume management of other types of energy resources by applying for a new Agreement under the same requirements as §224.53 and §224.54 for that additional type of energy resource.
224.65	How may a Tribe assume additional activities under an Agreement?	Outlines an amendment process for making changes to an already approved Agreement.
224.68 (d)	How will the Secretary use public comment?	If Secretary makes changes to final proposed Agreement based on public comment the Tribe must approve final changes in writing
Subpart C — Approval of Tribal Energy Resource Agreements		
224.76	Upon notification of disapproval, may a Tribe re-submit a revised final proposed Agreement?	Yes – Tribe may submit a revised final proposed Agreement
Subpart D — Implementation of Tribal Energy Resource Agreements		
224.83	What are the responsibilities of a Tribe following execution of Leases, business Agreements, and Rights-of-Way under an Agreement?	Inform public, send copy of any agreements to the Director, and provide documentation to Director of information that would allow Secretary to discharge trust responsibilities
224.87	What are the responsibilities of a Tribe if it discovers a Violation or Breach?	Tribe must provide written notice to Director for provisions (a) through (c)
Subpart E — Interested Party Petitions		
224.108	What must a petition contain?	Provisions (a) through (j) outline petition information requirements
224.112	What may the Tribe do after it completes petition consultation with the Director?	After completion of petition consultation Tribe may submit a written response.
224.120 (a)	How must the Director proceed with a petition if it meets the threshold determinations?	The Tribe must provide a written response to the Director's determination.
Subpart F — Periodic Reviews		
224.139 (b)	What must a Tribe do after receiving a notice of imminent jeopardy to a physical trust asset	Submit a written response to the Director

Table 1 – Information Collections Associated with Tribal Energy Resource Agreements Under The Indian Tribal Energy Development And Self Determination Act		
Citation 25 CFR 224	Section Title	Information Collection Requirement
Subpart G — Reassumption		
224.156	What information must the Tribe's response to the notice of intent to reassume include?	Information requirements for Tribes response to notice of intent to reassume.
Subpart H – Rescission		
224.173	How does a Tribe rescind an Agreement?	Tribe must submit a written tribal resolution to initiate a rescission.

- 2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.**

The Office of Indian Energy and Economic Development (IEED) uses the information collected through these regulations to determine the capacity of tribes to manage the development of energy resources on tribal lands. Information collected in subparts B and C enables IEED to engage in a consultation process with tribes designed to foster optimal pre-planning of development proposals and speed up the review and approval process for TERAs.

Information collected in subpart D provides public notice and opportunity for review of TERAs by the public, industry, and government agencies. Specifically, the information collection associated with subpart D, section 224.83 requires a tribe to notify the public of actions taken under a TERA. This constitutes a third party notification. This third party notification is necessary so that the public is fully informed of a tribe's energy development activity and has an opportunity to comment on any potential impacts from these activities. This third party notification is a mandate of Title V, Section 503 of the Energy Policy Act of 2005. Taken together, the information collected by IEED in subparts D and F will enhance and ensure the accountability of tribes for the prudent development of energy resources.

Information collected by IEED in subpart E: (1) ensures that the public has an avenue to review tribes' performance in implementing a TERA; (2) creates a process for preventing damage to sensitive resources; (3) ensures that the public has fully communicated with the tribe in the petition process; (4) ensures that the tribes are not subject to complaints based on erroneous or irrelevant information; and (4) ensures that tribes are made fully aware of any requirements for a change in operations.

As part of this process, information collected by IEED in subpart G ensures that a tribe is fully aware of any attempt by the Department of the Interior (DOI) to resume management authority over energy resources on tribal lands.

If a tribe wants to voluntarily relinquish its energy resource management authority, information IEED collects in subpart H ensures that the tribal government fully endorses this change.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].**

IEED has posted the regulations (25 CFR Part 224) on the internet. It plans to post any operating procedures that IEED develops, and a status report on TERA applications on the website as well. Applicants may provide information via email.

- 4. Describe efforts to identify duplication.**

The information needed to fulfill the Energy Policy Act provisions regarding TERAs is not available from any other collection. Other collections related to energy development on tribal lands are project-specific and do not envision the wholesale assumption by a tribe of management responsibilities for the entire energy development process.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Tribes are not considered small entities. However, the IEED has done its best to minimize the amount of information requested to only that which is necessary.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109-58) is very specific in the types of information that IEED must collect to ensure Departmental and tribal accountability. Without the collections outlined in Table 1 this program of review, approval and monitoring of TERA's would not be possible to carry out.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed**

- and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that would necessitate any of the conditions stated in Question 7 except that there may be decision points during the 270-day statutorily mandated period for review and approval of a TERA that will require a tribe to provide a written response in fewer than 30 days after receipt.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

IEED published a 60-day notice soliciting comments on this information collection on January 29, 2010 (75 FR 4836). No comments were received in response to this notice.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

No tribes have submitted an application for a TERA, to date; therefore, IEED contacted a number of people who participated in nationwide meetings held during the development of the final regulations in 2008 to obtain their input on projected burden estimates, the availability of data, and format, etc. The following individual can be contacted for information on respondents' reaction to the burden likely to be imposed by this program:

- David Taylor, Navajo Nation Department of Justice (928) 871-6932.

9. **Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

Respondents do not receive any payments or gifts.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

We provide no assurance of confidentiality but some of the information may be protected by the Privacy Act. Any correspondence or reports that collect information covered by the Privacy

Act will contain a Privacy Act statement.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There is no need for information of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

The total universe of possible respondents includes all the tribes in the 48 contiguous states of the United States and the Metlakatla Indian Community in Alaska. The timing of a tribe's application for a TERA is entirely up to the tribe and is not tied to a schedule. Once an application is submitted to the Department it starts a 270-day clock with several milestones for the Department to achieve before a TERA agreement is approved.

The TERA program has only been in place since mid-2008, and no tribes have yet submitted an application for a TERA. We based our estimates for the number of respondents and responses on an understanding that, as the energy development industry increasingly reaches out to Indian Country, tribes will begin participating in the program. On average, we estimate that the total number of respondents, on an annual basis, is 14 and results annually in 34 instances of information collection related to the TERA regulations.

The information collection costs in Table 1 result from taking the number of hours multiplied by an hourly salary and benefits for tribal staff and private consultants performing work on behalf of the tribe.

$$\text{Total IC cost} = [(\text{staff hours}) \times (\text{salary} + \text{benefits})]$$

To obtain the hourly rate, we used the wages and salaries figure for all workers from BLS Release USDL 09-1098, *Employer Costs for Employee Compensation—June 2009*, Table 1, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, June 2009*. That figure is \$29.40. To account for benefits, we then multiplied this figure by 1.5. The resulting salary and benefits rate is \$44.10.

Table 2 – Public Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits)
Subpart B — Procedures for Obtaining Tribal Energy Resource Agreements						
224.53	What must an application for an agreement contain?	224.53 (a) - (p) Prepare and submit application	1080	4	4,320	\$190, 512

Table 2 – Public Burden from Information Collections Associated with TERAs

Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits)
224.63	What provisions must an agreement contain?	224.63 (a) - (c) Prepare and submit agreement				
224.57(d)	What must the Director do upon receipt of an application?	Respond to written request for additional information	480	6	2,880	\$127,008
224.68(d)	How will the Secretary use public comment?	Approve changes to final agreement in writing				
224.61	What will the Tribe provide to the Director after receipt of the Director's report on the application consultation meeting?	Prepare and submit final proposed agreement	32	4	128	\$5,645
224.64	How may a Tribe assume management of development of different types of energy resources?	Apply for new agreement to assume management other types of energy resources (under the same requirements as §224.53 and §224.54 for that additional type of energy resource)	720	1	720	\$31,752
224.65	How may a Tribe assume additional activities under an agreement?	Amend an already-approved agreement	520	2	1040	\$45,864
224.76	Upon notification of disapproval, may a Tribe re-submit a revised final proposed agreement?	Prepare and submit revised final proposed agreement				
Subpart C — Approval of Tribal Energy Resource Agreements						
See section 224.76, above.						
Subpart D — Implementation of Tribal Energy Resource Agreements						

Table 2 – Public Burden from Information Collections Associated with TERAs

Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits)
224.83	What are the responsibilities of a Tribe following execution of leases, business agreements, and rights-of-way under an agreement?	Inform public, send copy of any agreements to the Director, and provide documentation to Director of information that would allow Secretary to discharge trust responsibilities	32	10	320	\$14,112
224.87	What are the responsibilities of a Tribe if it discovers a violation or breach?	Provide written notice to Director	120	3	360	\$15,876
224.120 (a)	How must the Director proceed with a petition if it meets the threshold determinations?	Submission of a written response to the Director's determination.				
224.139 (b)	What must a Tribe do after receiving a notice of imminent jeopardy to a physical trust asset	Prepare and submit a written response to the Director				
Subpart E — Interested Party Petitions						
224.108	What must a petition contain?	Prepare and submit interested party petition	464	1	464	\$20,462
224.112	What may the Tribe do after it completes petition consultation with the Director?	Prepare and submit a written response	408	1	408	\$17,993
See section 224,120(a) above						
Subpart F — Periodic Reviews						
See section 224.139 (b) above						
Subpart G — Reassumption						
224.156	What information must the Tribe's response to the notice of intent to reassume include?	Respond to notice of intent to reassume.	80	1	80	\$3,528
Subpart H — Rescission						

Table 2 – Public Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Information Collection Requirement	Hour Burden for respondent	Average No. of Annual Responses	Annual Burden Hours for Respondent	Total Annual Cost (salary & benefits)
224.173	How does a Tribe rescind an agreement?	Submit a written tribal resolution to initiate a rescission.	32	1	32	\$1,411
TOTAL BURDEN					10,752	\$474,163

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or record keepers resulting from the collection of information.

An essential component of the evaluation of proposed TERAs is for the tribe to demonstrate that it has preexisting capabilities to manage energy development projects. The tribe should have resident technical and environmental expertise in addition to expertise in leasing and financial management. Therefore, to fulfill the regulatory requirements, tribes will have IT and other office systems already in place and have personnel with experience in their operation. Consequently, any costs for the acquisition of enterprise systems, technology, or capital equipment by a tribe, as a result of these regulations, will either be minimal or already a part of their everyday business operations. We estimate that respondents will incur a total annual cost of \$48,200 for operations and maintenance from all information collections associated with these regulations.

14. Provide estimates of annualized cost to the Federal government.

Federal employees in IEED working on the TERA program will spend part of their overall time on each aspect of the approval, review, and monitoring of TERA related information collections. This work will also require extensive consultation with tribes that submit TERA applications and coordination with other affected bureaus and offices in the Department. The time involved is tied to the time limits defined in the TERA regulations (i.e. TERA Application approval – 270 days). In addition, the Office of the Solicitor, while not IEED employees, will need to conduct extensive review of many TERA related collections. We estimate that the annual cost to the Federal Government to administer this information collection is **\$869,971**. This includes \$844,971 in salary costs, plus \$25,000 in administrative costs consisting of miscellaneous services and supplies.

Table 3 – Federal Government Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Federal Government Activity	Hour Burden	Average No. of Annual Responses	Annual Burden Hours	Total Annual Cost (salary & benefits)*
Subpart B — Procedures for Obtaining Tribal Energy Resource Agreements						
224.53 and	What must an Application for an	Review application / agreement	2,160	4	8,640	\$393,984

Table 3 – Federal Government Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Federal Government Activity	Hour Burden	Average No. of Annual Responses	Annual Burden Hours	Total Annual Cost (salary & benefits)*
224.63	Agreement contain and What provisions must an Agreement contain?					
224.57(d)	What must the Director do upon receipt of an Application?	Request additional information				
224.61	What will the Tribe provide to the Director after receipt of the Director's report on the Application consultation meeting?	Review final proposed Agreement	450	4	1,800	\$ 71,712
224.64	How may a Tribe assume management of development of different types of energy resources?	Review application for new Agreement to assume management other types of energy resources	2,160	1	2,160	\$ 86,054
224.65	How may a Tribe assume additional activities under an Agreement?	Review amendment	2,160	1	2,160	\$ 86,054
224.68 (d)	How will the Secretary use public comment?	Make changes to finalize Agreement	Included in 224.61, above.			
Subpart C — Approval of Tribal Energy Resource Agreements						
224.76	Upon notification of disapproval, may a Tribe re-submit a revised final proposed Agreement?	Review submission of a revised final proposed Agreement	Included in 224.61, above			
Subpart D — Implementation of Tribal Energy Resource Agreements						
224.83	What are the responsibilities of a Tribe following execution of Leases, business Agreements, and	Review copy of any agreements and documentation of information	160	10	1,600	\$ 63,744

Table 3 – Federal Government Burden from Information Collections Associated with TERAs						
Citation 25 CFR 224	Section Title	Federal Government Activity	Hour Burden	Average No. of Annual Responses	Annual Burden Hours	Total Annual Cost (salary & benefits)*
	Rights-of-Way under an Agreement?					
224.87	What are the responsibilities of a Tribe if it discovers a Violation or Breach?	Review notice of violation	240	1	240	\$ 9,562
Subpart E — Interested Party Petitions						
224.108	What must a petition contain?	Review petition	960	1	960	\$ 38,246
224.112	What may the Tribe do after it completes petition consultation with the Director?	Review written response				
224.120 (a)	How must the Director proceed with a petition if it meets the threshold determinations?	Review written response				
Subpart F — Periodic Reviews						
224.139 (b)	What must a Tribe do after receiving a notice of imminent jeopardy to a physical trust asset	Review written response	960	1	960	\$ 38,246
Subpart G — Reassumption						
224.156	What information must the Tribe's response to the notice of intent to reassume include?	Review response to notice of intent to reassume.	960	1	960	\$ 38,246
Subpart H — Rescission						
224.173	How does a Tribe rescind an Agreement?	Review tribal resolution to initiate a rescission.	480	1	480	\$ 19,123
TOTAL BURDEN						\$ 844,971

* Salary is based on a mix of personnel including: Project Manager at GS-15; a Solicitor at GS-14; two Program Analysts at GS-13; and an Administrative Assistant at GS-10. IEED has averaged the hourly rate required based on the mix of personnel required for each task, using the Office of Personnel Management Salary Table 2010-GS. IEED estimates that the mix of work required to review the initial application will require more Project Manager and Solicitor

time than for other tasks. For this reason, the average salary rate is higher for that task than for the others. Specifically, IEED estimates:

- The average hourly salary based on the mix of personnel required for review of the initial application to be **\$45.60 per hour**; and
- The average hourly salary based on the mix of personnel required for review of each other task to be **\$39.84 per hour**.

Both of these estimated average salary costs include a 1.5 multiplier to account for benefits, based on the BLS Release USDL 09-1098, *Employer Costs for Employee Compensation—June 2009*.

15. Explain the reasons for any program changes or adjustments.

No program changes or adjustments are requested as part of this renewal.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

We have no plans to publish these collections of information associated with the TERA process except for where the regulations require public notice and opportunity for review and comment about TERA plans.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

IEED displays the OMB control number and expiration date on any correspondence with respondents and in the regulations in Section 224.42.

18. Certification.

There are no exceptions to the certification statement.